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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,893	08/18/2003	Terry Vovan	03/143	3878

7590

10/11/2006

LEON D. ROSEN  
FREILICH, HORNBAKER & ROSEN  
Suite 1220  
10960 Wilshire Boulevard  
Los Angeles, CA 90024

EXAMINER

THAKUR, VIREN A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/645,893

**Applicant(s)**

VOVAN, TERRY

**Examiner**

Viren Thakur

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 11/17/2003.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4, 5, 7, 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - a. Claim 4 recites the limitation "the cover axis" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is unclear as to which axis the cover axis refers.
  - b. Claim 5 recites the limitation "high tolerances." It is unclear as to what is defined as a high tolerance with respect to receiving a dimple into the dimple receiving region.
  - c. Claim 7 recites the limitation "said plurality of dimples and dimple receiving regions each includes at least four of each...." It is unclear as to what each dimple and dimple receiving region includes four of each of. For examination purposes it is interpreted that the container must contain at least four dimples and four dimple receiving regions.

Art Unit: 1761

- d. Claim 7 recites the limitation "said axis" in line 5. There is insufficient antecedent basis for this limitation in the claim. It is unclear as to which axis is being referred to. For examination purposes it is interpreted that said axis refers to the polar axis with respect to the center of the base.
- e. Claim 9 recites the limitation "the periphery" in line 4. There is insufficient antecedent basis for this limitation in the claim. It is unclear as to from which periphery the above specified claim is attempting to claim antecedent basis.
- f. Claim 10 recites the limitation "said handle having primarily vertical and parallel walls extending normal to said axis." The examiner interprets that said handle has vertical walls and said axis is normal to the center of the container base. Therefore, it is unclear as to how said vertical walls are normal to said axis.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 1761

4. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Kalmanides et al (U.S. 5,613,607). Kalmanides et al. disclose a container having a base (Figure 2, Item 37) and a cover (Figure 2, Item 25) lying over said base, and at least one piece of pastry (Column 2, Line 50-56) lying in said base (Figure 2, Item 37), said base and cover each being formed of plastic (Column 10, Line 33-42), that has been deformed (Figure 1, Item 26 and Item 40), with said cover being formed of a transparent plastic sheet (Column 6, Line 30-42) and said base and cover having adjacent peripheral surfaces (Figure 2, Item 30, Item 38), including at least one sticker that is bonded to a peripheral portion of said base and to an adjacent peripheral portion of said cover, to indicate <sup>that</sup> ~~the~~ the container has not been opened (Column 16, Lines 18-30).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1761

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. Claims 1-3, 5-7 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (U.S. 5,613,607) in view of Elwell (U.S. 1,515,560).

With regard to Claims 1-3 and 5-7, Kalmanides et al. disclose a cylindrical container for holding a food product such as a cake or a pastry, comprised of plastic, as cited above. Kalmanides et al. further disclose a locking mechanism wherein the deformed cover (Figure 2, Item 20) and the deformed base (Figure 2, Item 21) both engage each other at adjacent locations on said peripheral edge of the cover (Figure 2, Item 30 and Figure 2, Item 40), which when engaged and then turned arcuately lock said cover with said base (Column 7 to Column 10 Line 21). Kalmanides et al. further teach wherein said cover is of greater height than said base. The hollow receiving section (Figure 2, Item 36) and a subsequent terminating section (Figure 2, Item 40) for receiving said flange (Figure 2, Item 30) from said cover, is located on the base; while the protruding flange (Figure 2, Item 30) is located on the cover. Additionally, as discussed above, Kalmanides et al. disclose providing tape to secure said cover with said

Art Unit: 1761

base for the purpose of providing tamper evidence. As recited in Claim 7, Kalmanides et al. teach at least four protruding regions that engage with at least four engaging regions for providing the locking mechanism to secure said cover to said base (Column 7, Line 54 to Column 8, Line 4).

Kalmanides et al. does not disclose wherein said cover contains a vertically extending hollow chimney that receives the projection of one of said dimples located on said base and wherein said dimple receiving cavity forms a transition location between each chimney and each corresponding dimple receiving cavity, wherein each transition location has a depth smaller than said depth of said dimple receiving cavity, so as to resist turning of said cover on said base to move said dimples into said chimneys.

Elwell teaches a closure arrangement for containers that provides for a leak proof joint that cannot be accidentally detached (Page 1, Lines 18-26); having what is known to one of ordinary skill in the art as a bayonet style locking mechanism wherein the base (Figure 1, Item A) comprises protrusions (Figure 1, Item 15) and the cover (Figure 1, Item c) comprises a vertical receiving section (Figure 1, Item 30) for said protrusions and further comprising a region which secures said protrusion into said bayonet (Figure 2, Item 30), thus preventing accidental removal (Page 1, Line 109 to Page 2, Line 34). It is further known that such joints are well known in the art to be used as locking mechanisms so as to prevent dislodgement of one member from another.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Kalmanides et al. to include protrusions on the base of the container and a receiving mechanism that locks and prevents detachment of the cover from said base by using bayonet style joints, as taught by Elwell for the purpose of ensuring that the container provides a leak proof enclosure that will not detach when moved or during transport. Such a modification ensures that spillage of the contents will be contained within said container. Furthermore, changing the orientation of the protrusions and the receiving sections between the base and the cover would not provide a patentable feature to the claims, as the locking mechanism remains the same.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (U.S. 5,613,607) in view of Elwell (U.S. 1,515,560), as applied to claims 1-3, 5-7, 9 and 15 above, and further in view of Martinelli (U.S. 3,854,582). Kalmanides et al. in view of Elwell disclose a cylindrical container for holding a food product such as a cake or a pastry, comprised of plastic, as applied above in paragraph 7.

Kalmanides et al. in view of Elwell does not teach wherein said cover has a top plastic sheet with opposite sides wherein said opposite sides each form a downwardly projecting recess that forms said top plastic sheet with a handle for turning the cover.



Martinelli teaches a container base (Figure 1, Item 10) having locking lugs (Figure 1, Item 20) and a cover for said base (Figure 1, Item 30) comprising receiving ends (Figure 1, Item 42) for said lugs for the purpose of providing a locking mechanism that prevents said cover from disengaging from said base (Column 1, Line 1-3). Martinelli further discloses wherein said cover comprises downwardly projecting recesses that forms a handle (Figure 1, Item 36), for the purpose of providing a cover that can also serve as a pedestal for said base (Column 1, Line 8-10).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Kalmanides et al. in view of Elwell to include a cover that contains depressions which form a handle, as taught by Martinelli for the purpose of providing a cover that can also serve as a pedestal for the container. Such a modification allows for the container of Kalmanides et al. to also have a display pedestal to be used, for example, when serving the food product contained within said container.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (U.S. 5,613,607) in view of Elwell (U.S. 1,515,560) as applied to claims 1-3, 5-7, 9 and 15 above, and further in view of Dahl (U.S. 3,690,902). Kalmanides et al. disclose as applied above in paragraph 7. Kalmanides et al. in view of Elwell further discloses stiffening ribs (Figure 2, Item 26), for the purpose of providing strength and rigidity to said cover (Column 6, Line 26-30) and

vertical panels (Figure 2, Item 24) for the purpose of providing viewing and containment for said food product contained within said container.

Kalmanides et al. in view of Elwell does not disclose wherein said cover has vertical ribs that leave panels between said ribs wherein said cover contains wide panels and narrow panels; said narrow panels having a circumferential width no greater than half the width of each wide panel.

Dahl teaches a cake container comprising a cover having both wide side walls (Figure 2, Item 24) and narrow walls (Figure 2, Item 22) and ribs contained between said walls for the purpose of providing additional stability and resiliency to said cover (Column 4, Line 26-30). Thus, if bumped or crushed said cover will have a tendency to bounce back and assume its original shape and form.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Kalmanides et al. in view of Elwell by providing both narrow and wide side walls for the purpose of providing additional stability and resiliency to aid cover. Such a modification will prevent said cover from being crushed in the event that it is bumped; therefore maintaining its aesthetic appearance.

10. Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (U.S. 5,613,607) in view of Martinelli (U.S. 3,854,582). Kalmanides et al. disclose a container for holding food products such as a cake, further comprising a cover and a base wherein said cover is latchable against

Art Unit: 1761

said base by locking said cover into recesses within said base and turning said cover, as applied above. As recited in instant claim 12, Kalmanides et al. further disclose a base that is deformed to leave a plurality of vertically extending chimneys (Figure 2, Item 36) with open lower ends for receiving said dimples (Figure 8, Item 30) and upper ends (Figure 2, Item 43) to form a plurality of dimple receiving cavities for receiving a dimple when the cover is turned.

Kalmanides et al. does not teach wherein said cover top wall has a pair of spaced depressions that leave handle walls for turning the cover, wherein said handle walls lie on opposite sides of said axis to leave a single handle between them, wherein said handle has a primarily vertical and parallel walls extending normal to said axis. Kalmanides et al. further does not teach said handle handle walls spaced apart by a plurality of inches to receive a different finger of a person to turn the cover.

Martinelli teaches a container base (Figure 1, Item 10) having locking lugs (Figure 1, Item 20) and a cover for said base (Figure 1, Item 30) comprising receiving ends (Figure 1, Item 42) for said lugs for the purpose of providing a locking mechanism that prevents said cover from disengaging from said base (Column 1, Line 1-3). Martinelli further discloses wherein said cover comprises downwardly projecting recesses that form a handle (Figure 1, Item 36), for the purpose of providing a cover that can also serve as a pedestal for said base (Column 1, Line 8-10).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Kalmanides et al. to include a cover that contains depressions which form a handle, as taught by Martinelli for the purpose of providing a cover that can also serve as a pedestal for the container. Such a modification allows for the container of Kalmanides et al. to also have a display pedestal to be used, for example, when serving a food product contained within said container. Additionally such a modification provides a location for placing the cover so as to prevent it from being lost.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (U.S. 5,613,607) in view of Martinelli (U.S. 3,854,582) as applied to claim 9-12 above, and in further view of DeRosset (U.S. 4,197,940). Kalmanides et al. in view of Martinelli disclose a container having two depressions on a cover to form a handle for turning said cover, and a base, which receives dimples in said cover within chimneys in said base that are subsequently locked in place by turning said cover, as applied above.

Kalmanides et al. in view of Martinelli does not disclose a cake container having a base that has a central recess of a diameter of about one inch and centered on said axis, and wherein said recess is depressed below said base.

DeRosset discloses a circular cake tray and cover wherein the cake plate (Figure 1, Item 105) comprises a cake supporting surface (Figure 1, Item 160), grooves (Figure 1, Item 165) and a central cylindrical recess (Figure 1, Item 170)

Art Unit: 1761

for the purpose of providing matching grooves and recesses that will stabilize said plate (Figure 1, Item 105) within the cake tray (Figure 1, Item 115) to prevent damage to the cake, caused by movement of the cake plate (Column 1, Line 6-23).

It would have been obvious to a person having ordinary skill in the art to modify Kalmanides et al. in view of Martinelli to include a base having a central cylindrical recess as taught by DeRosset for the purpose of providing a plate structure that secures itself to a tray through the use of matching grooves and recess. Such a modification prevents the shifting of the contents, which are disposed on the base of the container, and thus prevents damage of the contents when said container is tipped over.

12. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (U.S. 5,613,607) in view of Elwell (U.S. 1,515,560) as applied to claims 1-3, 5-7, 9 and 15 above, and further in view of Lisch (U.S. 5,671,856). Kalmanides et al. in view of Elwell disclose a cylindrical container for holding a food product such as a cake or a pastry, comprised of plastic, as applied above in paragraph 7. As recited in Claim 16, Kalmanides et al. teach upward protrusions having a height equal to that of the height of said base. As recited in Claim 17, Kalmanides et al. disclose wherein said base comprises upwardly formed projections forming a circular band at said predetermined height

(Figure 4, Item 36), so as to ensure the stability of the base and maintain the cake in its position (Column 7, Line 26-53).

Kalmanides et al. in view of Elwell does not disclose wherein said base comprises upwardly deformed projections that form a star having at least four star points with sides that extend radially.

Lisch discloses a container that is capable of holding a cake having a cake supporting base surface (Figure 1, Item 20; Figure 7D, Item 20), wherein said cover is latchable to said base by matching extension on said cover (Figure 1, Item 32) to recesses in said base (Figure 1, Item 48 and then turning said cover. Lisch further discloses a base comprising upward projections that form a star shape (Figure 7A-1), having more than four star points, for the purpose of providing partitions that divide said base into multiple sections for storing articles within.

Therefore, it would have been obvious to a person having ordinary skill in the art to modify Kalmanides et al. in view of Elwell to use an upwardly projecting star shape as taught by Lisch for the purpose of providing sections that can divide said food product into different sections. Such a modification can further provide guidelines, for example, when cutting said cake into portions for serving.

### ***Conclusion***

Art Unit: 1761

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. 2,816,682 discloses a container for pressure generating products having a twisting locking feature and a lid with wall handles and the ability to relieve the pressure so as to prevent the cover from coming off. U.S. 4,867,303 discloses a cover and a base for a pastry such as a cake; wherein said base has locking features circumferentially spaced which engage with corresponding locking elements located on the cover. It is further disclosed wherein said cover is comprised of plastic that is transparent, which allows for viewing of the contents disposed within the base. U.S. 5,207,345 discloses a lid having a handle formed from a pair of depressions which aids in locking the cover onto the container by allowing the user to twist said cover into the threads of the container. U.S. 5,287,959 discloses a domed cover for covering food products such as cakes wherein said cover is transparent for viewing the food product and contains a ribbed structure for providing support for said cover, and to provide crush resistance. U.S. 5,931,333 discloses a container including a colander and further comprising a lid structure, wherein the lid structure contains depressions that allows for the insertion of fingers for the purpose of removing the lid from the container. U.S. 6,595,366 discloses a container having a transparent cover and a base that has a support structure for maintaining a food product. It is additionally discloses wherein said cover contains ribs to help strengthen the package.

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Viren Thakur  
Patent Examiner  
Art Unit: 1761



KEITH HENDRICKS  
PRIMARY EXAMINER